

SUBJECT: Transferring water and sewer utility regulation to the Texas Water Commission

COMMITTEE: State Affairs: favorable, without amendment

VOTE: 9 ayes--Ceverha, Millsap, Davis, P. Hill, Horn, Keller, Pennington, Short, Stiles  
1 nay--C. Smith  
3 present, not voting--Laney, Bomer, Gilley  
2 absent--Bush, Green

SENATE VOTE: 26 ayes, 4 nays (Caperton, Doggett, Edwards, Whitmire)

WITNESSES: The State Affairs Committee did not hold a public hearing on SB 884. At the hearing on the companion HB 1885, by Schlueter, there were no witnesses. At the Senate Intergovernmental Relations Committee hearing on SB 884:

For--Frank R. Booth and Timothy L. Brown, Independent Water and Sewer Companies of Texas, Inc.; Bill Finck, Forrest Glenn-Sunbelt-Lackland Utility Corp., San Antonio; Melvin C. Sueltenfuss, Lackland City Water Co., San Antonio; Gerald C. Henckel, San Antonio; Jack Bishop, Texas Association of Rural Water Cooperatives

Against--Ardie Baer, city of Houston

On--Commissioner Alan R. Erwin, Public Utility Commission

BACKGROUND: Under the Public Utility Regulatory Act, VACS art. 1446c, the Public Utility Commission regulates electric, telephone, water, and sewer utilities. In 1982, 482 privately-owned water utilities and 80 privately-owned sewer utilities were under the PUC's certification and rate-making jurisdiction. Most of these are small companies serving rural and suburban areas. They serve an estimated total of less than 200,000 water connections statewide. In 1982, the PUC issued 68 final orders in water- and sewer-utility rate cases and received 1,732 consumer complaints regarding water and sewer utilities.

The Texas Water Commission is the judicial arm of the Texas Department of Water Resources. It is composed of three members appointed by the Governor. The commission relies on technical staff work performed by DWR personnel under the direction of the executive director.

DIGEST: SB 884 would transfer regulatory jurisdiction over water and sewer utilities from the Public Utility Commission to the Texas Water Commission. The bill, entitled the "Water and Sewer Utility Regulatory Act," consists primarily of language from the Public Utility Regulatory Act, with portions of the PURA that would not apply to water and sewer utilities deleted. SB 884 also includes some changes that would be made in the PURA by SB 232, by Caperton et al., the PUC Sunset bill; for example, it incorporates SB 232's guidelines with regard to inclusion of construction work in progress in utility rate bases.

SUPPORTERS SAY: The PUC has its hands full trying to regulate the electric and telephone utilities. Electric and telephone companies under the PUC's jurisdiction have annual revenues of \$11 billion, while the hundreds of small, scattered water and sewer companies have a total of about \$9 million. The PUC doesn't have adequate resources to keep track of all these companies and give them a high priority. Water and sewer rate cases are handled at the PUC mainly by junior staff, who move up to electric and telephone cases as they become more experienced.

It makes sense to put all regulatory authority over water resources in a single state agency. The Texas Water Commission is more qualified to deal with water. The commission already has authority over surface water-use permits, wastewater-discharge permits, adjudication of water rights, and regulation of water districts. The commission has rate-making expertise. It regulates the wholesale rates at which surface water is sold among municipalities, water districts, industries, and irrigators.

The Water Commission has a public-interest advocate who is a party to all proceedings before the commission. The public-interest advocate could represent the interests of ratepayers in water- and sewer-utility rate cases. The office would be elevated to greater importance by the additional jurisdiction this bill would grant to the commission.

The chairman of the PUC has endorsed transferring water- and sewer-utility regulation to the Water Commission.

OPPONENTS  
SAY:

This legislation is designed to insulate the water and sewer utilities from the ongoing reform of public-utility regulation in Texas. It is clear that the water and sewer companies think they can get a better deal on rates at the Water Commission and not be supervised as closely. Even the PUC's most vocal reform-oriented critics agree that the commission has done a first-rate job in regulating the water utilities. The PUC has penalized several water operators because of their neglected and unhealthy systems and their requests for exorbitant rates. As one public-utility commissioner has expressed it, the "if it isn't broke, don't fix it" rule should apply in this case. None of the public-utility commissioners has endorsed transferring water- and sewer-utility regulation out of the PUC.

The Water Commission doesn't know a thing about utility regulation, and it has hardly any staff to do the job. No other state puts water-utility rate-making and enforcement of water-quality standards in the same agency. Utility commissions regulate rates, and water agencies regulate water quality.

Under this bill, the Water Commission would have conflicting mandates: to require compliance with high water-quality standards, but to keep rates down.

SB 884 would prevent consumers from having adequate representation in water- and sewer-utility rate cases. The DWR public-interest-advocate office is underfunded, understaffed, and ineffectual. The public-interest advocate is not allowed to appeal any decision or other action of the Water Commission. And because they are geographically fragmented into small groups, water-utility consumers are not represented by the organizations that represent electric- and telephone-utility ratepayers. The bill should be amended to specify that the independent office of public-utility counsel created by SB 232 to represent residential and small-business ratepayers may represent water and sewer utility customers in rate cases and consumer complaints before the Water Commission.

SB 884 should also be amended to incorporate other reforms made by SB 232. For example, it should specify that, in setting rates, the commission must consider the quality of the utility's service, the efficiency of its operations, and the quality of its management. It should incorporate the provision in SB 232 that would give the regulatory commission enforcement authority with respect to rural nonprofit water-supply and sewer-service corporations. And it should include the civil-penalty provisions specified in SB 232.